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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Daniel T. Daly et al.

Application No.: 10/068,138

Group No.: 1764

Filed: February 5, 2002

Examiner:

Jerry D. Johnson

For: EMULSIFIED WATER BLENDED FUEL

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450, Alexandria, VA 22313-1450

PETITION TO CLAIM BENEFIT UNDER 35 U.S.C. 120, 121, OR 365(C)  
OF A PRIOR COPENDING NONPROVISIONAL APPLICATION OR  
INTERNATIONAL APPLICATION DESIGNATING THE  
UNITED STATES OF AMERICA  
(37 C.F.R. 1.78(a)(3))

**NOTE:** A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. 37 C.F.R. § 1.78(a)(1). Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. 37 C.F.R. § 1.78(a)(2)(i). The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior filed application. 37 C.F.R. § 1.78(a)(2)(iv).

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10 \*

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☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

Signature

Janet Farr

(type or print name of person certifying)

Date: 10/15/03

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Petition to Claim Benefit under 35 U.S.C. 120, 121, or 365(c) of a Prior Copending Nonprovisional Application or International Application Designating the United States of America [5-1.5]—page 1 of 3)

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3. The surcharge fee set forth in § 1.17(t) required by 37 C.F.R. 1.55(c)(1), is paid as follows:

- ☐ Attached is a ☐ check ☐ money order in the amount of \$1,300.00
- ☒ Authorization is hereby made to charge the amount of ~~\$1,300.00~~ 1,330.00
- ☒ to Deposit Account No. 12-2275
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038

**WARNING:** Credit card information should not be included on this form as it may become public.

- ☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

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**SIGNATURE OF PRACTITIONER**  
THE LUBRIZOL CORPORATION  
Neil A. DuChez

(type or print name of practitioner)

29400 Lakeland Blvd.

P.O. Address

Wickliffe, Ohio 44092-2298

The time in which the reference must be submitted is governed by 37 C.F.R. § 1.78(a)(2)(ii), which states:

"(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;

(B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(C) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000."

NOTE: (3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

1. Applicant hereby petitions, in accordance with § 1.78(a)(3), to claim the benefit, for this application under 35 U.S.C.

☒ 120      ☐ 121      ☐ 365(c),

☒ of prior copending nonprovisional application no.: 09/152,852

filing date: September 14, 1998

☐ of international application designating the U.S. no.:

international filing date: \_\_\_\_\_

2. Applicant states that the entire delay between the date the claim for the benefit of the earlier application was due under paragraph (a)(2)(ii) of 37 C.F.R. § 1.78 and the date this claim is filed was unintentional.

(Petition to Claim Benefit under 35 U.S.C. 120, 121, or 365(c) of a Prior Copending Nonprovisional Application or International Application Designating the United States of America [5-1.5]—page 2 of 3)